

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

AMERICAN COMMUNITY
NEWSPAPERS, LLC d/b/a STAR
COMMUNITY NEWSPAPERS,
Plaintiff,

v.

THE CITY OF PLANO,
Defendant.

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Case No. 4:06-cv-295

ORDER GRANTING MOTION FOR EXTENSION OF TIME

Before the court are the Plaintiff's "Motion for Extension of Time to File a Notice of Appeal" (de # 98) and a Response (de # 99) and Reply (de # 100) thereto. Having considered the Motion, the responsive briefing and the applicable law, the court is of the opinion that the Plaintiff's Motion should be GRANTED.

On February 8, 2008, the court signed a final judgment dismissing this lawsuit after adopting the Report and Recommendation of the Magistrate Judge suggesting that summary judgment be granted in the Defendant's favor. On March 6, 2008, the Plaintiff filed its Notice of Appeal with this court, appealing the court's decision on several orders. On the following day, a Friday, counsel for the Plaintiff decided to include an additional order in its appeal. The Plaintiff attempted to file an amended notice of appeal on that day, but technical difficulties prevented the Plaintiff from doing so. As the clerk's office was closed that day, counsel for the Plaintiff called the clerk's office on Monday, March 10, 2008, the deadline to file a notice of appeal.

The Plaintiff was given incorrect information regarding the filing of its amended notice. On Tuesday, March 11, 2008, the clerk's office called counsel for the Plaintiff and explained its mistake and how to correct it. The Plaintiff filed this Motion on March 12, 2008, asking for an extension of

time to file its Amended Notice of Appeal.

Rule 4 of the Federal Rules of Appellate Procedure governs the filing of a notice of appeal from an order or judgment of a district court. Rule 4(a)(1)(A) gives a party 30 days from the entry of an appealable order within which to file its notice. Rule 4(a)(5)(A) empowers the court to extend the time within which a party must file its notice of appeal. The court may do so if the party moves for such an extension within 30 days after its original deadline and that party can show either excusable neglect or good cause. FED. R. APP. P. 4(a)(5)(A).

Courts in this circuit evaluate the presence of excusable neglect under the following standard:

The determination is at bottom an equitable one, taking account all of the relevant circumstances surrounding the party's omission. These include . . . the danger of prejudice . . . , the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

Stotter v. Univ. of Tex. at San Antonio, 508 F.3d 812, 820 (5th Cir. 2007) (quoting *Midwest Employers Cas. Co. v. Williams*, 161 F.3d 877, 879 (5th Cir. 1998) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993))).

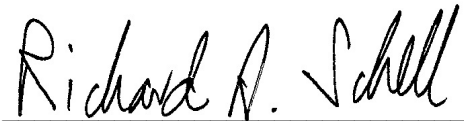
The court begins by noting that this Motion is unquestionably timely within the meaning of Rule 4(a)(5)(A). Here, the Plaintiff timely filed its Notice of Removal. Had it been able to file its amended notice when it made its first attempt, the filing would have been timely. It then received improper advice from the clerk's office, causing it to miss the deadline by a single day. This circumstance is beyond the Plaintiff's control. The court can divine no potential prejudice from these circumstances, and the Defendant has not suggested any. The efforts made by the Plaintiff's counsel have been far beyond reasonable and have plainly been made in good faith.

Balancing the equities, the court finds that the Plaintiff's neglect was excusable. The court

is, therefore, of the opinion that the Plaintiff's Motion (de # 98) should be, and hereby is, GRANTED. The Plaintiff shall have 10 days to file its Amended Notice of Appeal with this court. FED. R. APP. P. 4(a)(5)(C).

IT IS SO ORDERED.

SIGNED this the 21st day of April, 2008.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, more compact script. The last name "Schell" is written with a large, sweeping "S" and a distinct "ll" at the end.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE